

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Reexamination of the Comparative)	MM Docket No. 95-31
Standards for Noncommercial)	
Educational Applicants)	

To: The Commission

**COMMENTS OF
GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION**

Pursuant to Section 1.415 of the Commission’s rules, Georgia Public Telecommunications Commission (“GPTC”) hereby submits comments in response to the Commission’s *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”) on the procedures the Commission should use to license “non-reserved” channels in which both commercial and noncommercial educational entities have an interest.¹

I. Introduction

GPTC, an agency of the State of Georgia, is charged with providing educational and public telecommunications services to residents of the State. In partial fulfillment of that mandate, GPTC holds fourteen noncommercial educational radio station licenses and one FM translator license. Although GPTC’s radio stations serve most of the State of Georgia, GPTC does not hold a license to serve metropolitan Atlanta, which is the State

¹ *In re Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Further Notice of Proposed Rulemaking, MM. Docket No. 95-31, FCC 02-44, 2002 WL 257370 (rel. Feb. 25, 2002) (“*Second Further Notice*”).

capitol, the largest city in the State, and one of the fastest growing communities in the country.² There are also other areas of the State which are currently unserved and which GPTC would like to serve in the future.

However, because of the lack of available reserved channels in Atlanta and in other areas of the State, GPTC may be required to obtain “non-reserved” or “commercial” channels for any future stations. GPTC is concerned that two of the three proposals in the *Second Further Notice* would effectively preclude GPTC from achieving these goals by making it difficult, if not impossible, for it to acquire the necessary “non-reserved” channels. Since GPTC believes the public interest would be served by extending its public radio service to Atlanta and to other areas of the State unserved by public radio, GPTC urges the Commission to reject the two options limiting the ability of noncommercial entities to acquire “non-reserved” channels and instead to adopt a relaxed version of Option 3 that will facilitate noncommercial broadcasters’ opportunities to reserve noncommercial allotments.

II. **Argument**

In the *Second Further Notice*, the Commission proposed three options to resolve a situation where commercial and noncommercial entities submit conflicting applications

² GPTC previously held an FM translator license in Atlanta but was forced to cease operations due to interference to a new full power radio station in College Park, GA. Moreover, efforts by GPTC to date to obtain a full power license to provide noncommercial educational radio service in the Atlanta area have been unsuccessful. See *In re Applications of Georgia Public Telecommunications Commission, et al. for Construction Permit for New FM Station, Channel 298A (107.5 MHz), Roswell, Georgia*, Memorandum Opinion and Order, 7 FCC Rcd 7996 (1992), *vacated and remanded by, Mazdo Radio v. FCC*, 18 F.3d 953 (D.C. Cir. 1994), *on remand, In re Applications of Georgia Public Telecommunications Commission, et al. for a Construction Permit for New FM Station on Channel 298A (107.5 MHz), Roswell, Georgia*, Order, 11 FCC Rcd. 6644 (1996).

for a non-reserved radio or television station. Option 1 proposes to preclude noncommercial entities from applying for non-reserved allotments.³ Option 2 proposes to permit noncommercial applicants to acquire non-reserved channels or frequencies only when there is no conflict with a commercial applicant.⁴ Option 3 proposes to provide enhanced opportunities to reserve channels for noncommercial use by allowing applicants for noncommercial stations to reserve channels above 220 upon appropriate showings.⁵ The first two options would effectively preclude any new noncommercial radio allocations outside the reserved band, Channels 201 to 220, except in those situations where there is no commercial applicant. Option 3, while affording noncommercial applicants greater opportunities to obtain non-reserved channels, could unduly restrict the ability of noncommercial entities to provide valuable public radio services to areas currently unserved or underserved.

A. Option 1 Would Prevent Noncommercial Entities from Offering New Radio Services In Most Large Cities

The Commission's first option proposes to make public broadcasters ineligible to hold licenses for non-reserved channels and frequencies. As the Commission recognized in the *Second Further Notice*, "such a decision would preclude NCE entities from applying for non-reserved channels even when commercial entities do not wish to do so."⁶ With respect to radio in particular, this option would severely limit the availability of noncommercial radio applicants to acquire new stations because most of the existing

³ See *Second Further Notice*, ¶ 11.

⁴ See *id.* ¶¶ 12-14.

⁵ See *id.* ¶¶ 15-18.

⁶ *Id.* ¶ 112.

reserved band – Channels 201 to 220 – is occupied or applied for in major portions of the country, such as the State of Georgia. Indeed, this option would not serve the public interest because non-reserved channels and frequencies could remain unused and communities unserved by noncommercial entities, even if commercial entities did not desire to use the vacant spectrum.

B. Option 2 Would Exclude Noncommercial Applicants from Applying for Non-Reserved Allotments in Most Circumstances

The Commission's second proposal would permit noncommercial entities to acquire licenses for non-reserved channels and frequencies so long as there is no conflict with commercial entities. However, if both commercial and noncommercial entities filed applications for a channel or frequency that created a technical conflict, the Commission would summarily dismiss the noncommercial applicants and award the license to one of the commercial applicants, unless the applicants could negotiate a settlement.⁷

As the Commission recognized, there would be little or no incentive for commercial applicants to reach a settlement with conflicting noncommercial applicants under this proposal.⁸ In the end, conflicting noncommercial applicants would be dismissed and one of the commercial applicants would be awarded the license, whether or not the commercial entities ever engaged in good faith negotiations with the noncommercial applicants to resolve the technical conflicts.

While this option preserves the possibility that noncommercial applicants might obtain authorizations on non-reserved channels or frequencies, the prospects are limited.

⁷ See *id.* ¶ 13.

⁸ *Id.*

In particular, under Option 2 it would be unlikely that a noncommercial applicant would receive a non-reserved license in any major city or in the surrounding suburban areas because any noncommercial applicant would have competition from commercial applicants. As discussed above, for example, it is unlikely that GPTC would be able to obtain a non-reserved radio license to serve Atlanta or a surrounding suburb.

C. The Commission Should Adopt a Relaxed Standard Under Option 3 to Provide Enhanced Opportunities to Reserve Allotments for Noncommercial Use

Prior to the Commission's *Report and Order* in this proceeding⁹ that was set aside by the Court of Appeals,¹⁰ noncommercial educational applicants could apply for reserved channels, in which event they could face competing applications from other NCEs, or for commercial channels, in which event they could face a comparative hearing with commercial, or in rare cases, other noncommercial applicants. The Commission did not, however, allow NCEs to reserve "commercial" channels, *i.e.* channels 221 and above, for noncommercial use, except in extraordinary circumstances.¹¹ In its *Report and Order*, the Commission for the first time proposed to allow noncommercial educational applicants to request that new allotments – *i.e.*, channels above Channel 220 not already in the Table of Allotments – be added and reserved for noncommercial use where (a) the applicant could demonstrate that there is no available reserved spectrum to serve the

⁹ *In re Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd. 7386 (2000) ("*Report and Order*").

¹⁰ *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

¹¹ See *Report and Order*, ¶ 112.

community and (b) the applicant would provide a first or second noncommercial educational service to 10% of the population in the station's service area.¹²

Option 3 builds on this concept and proposes to extend these criteria to future allotments, but suggests that it might impose a more stringent standard where a noncommercial applicant seeks to reserve an existing FM allotment, as compared to a new channel in the FM Table of Allotments reserved for NCE use. Specifically, the Commission suggests that applicants proposing to reserve a vacant commercial FM channel currently in the FM Table would be required to “show that there are *no other channels* available that would serve *at least 50%* of the area within the protected service contour of the subject allotment.”¹³ This criteria would appear to be in addition to the criteria proposed in the *Report and Order*.

GPTC believes that the proposal would unduly complicate the reservation process and place an unnecessary burden on noncommercial entities seeking new public radio stations. The proposal would require the Commission and parties to keep track of existing FM allotments and any changes in those allotments so that they would know to which channels this additional burden would apply. It would also deprive communities of noncommercial educational service merely because 50% of the area outside the targeted community of license might be served by a station operating on reserved spectrum, even where that area was sparsely settled and incapable of supporting a noncommercial station. While GPTC recognizes that allowing existing allocations to be

¹² See *Second Further Notice*, ¶ 15.

¹³ *Id.* ¶ 18 (emphasis added).

reserved might deny commercial applicants the opportunity to apply for the channel, the Commission can consider that loss in the rulemaking proceeding to reserve the channel. Consequently, GPTC urges the Commission not to impose any different standard for reserving existing allotments and new channels above Channel 220.

In addition, the GPTC urges the Commission to adopt a relaxed standard for reserving channels above 220 for noncommercial use, one that will facilitate greater public radio service to unserved and to underserved communities with a minimum of administrative burden. The two criteria adopted in the *Report and Order* typify the kind of criteria that might be employed. In addition, the Commission might consider the ratio of commercial to noncommercial stations, much as it used in allocating reserved television channels in 1952.¹⁴ GPTC also urges the Commission to differentiate between religious and public broadcasters. Although religious broadcasters offer valid noncommercial educational services, their programming is fundamentally different from other noncommercial radio stations, like GPTC, that offer secular educational and public affairs programming. Thus, the presence of a religious broadcaster in a community does not mean that the public has access to the cultural, educational, public affairs, news and informational programming offered by public radio stations.

Likewise, FM translators that transmit noncommercial educational programming should not be counted as an existing noncommercial radio service. FM translators are secondary services and, as such, are required to stop providing service if they cause

¹⁴ See *In re Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 FCC 148 (1952) ("*Sixth Report and Order on Television Allocations*").

interference to a full power radio station.¹⁵ If FM translators were to be included in the reservation standard, a particular area could be viewed as having a noncommercial educational radio station one day, while the next day that translator station could be required under the Commission's rules to stop broadcasting because a new full-power commercial station has interference priority. Therefore, the Commission should not include FM translators in determining whether an area is served by one or more noncommercial educational radio stations.

III. Conclusion

For the reasons set forth above in these comments, GPTC urges the Commission to adopt a relaxed standard for noncommercial educational entities to reserve vacant and new allotments that distinguishes religious broadcasters and FM translators in determining whether other noncommercial radio stations already serve a particular area.

Respectfully submitted,

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Date: May 15, 2002

¹⁵ 47 C.F.R. § 74.1203.